

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CITY OF LAS CRUCES and DOÑA ANA  
COUNTY,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; UNITED  
STATES DEPARTMENT OF DEFENSE;  
NATIONAL GUARD BUREAU; THE LOFTS  
AT ALAMEDA, LLC; AMERICAN LINEN  
SUPPLY OF NEW MEXICO, INC.; RAWSON  
LEASING LIMITED LIABILITY CO.;  
CHISHOLM’S-VILLAGE PLAZA L.L.C.;  
JOSE AND YVONNE CORONADO; and  
Does 1-5,

Defendants.

CIVIL NO. 2:17-cv-00809-RB-GJF

**AMENDED COMPLAINT FOR  
DAMAGES AND DECLARATORY  
RELIEF**

The City of Las Cruces, New Mexico (“City”) and Doña Ana County, New Mexico (“County”) (collectively, “Plaintiffs”), by and through their attorneys, hereby allege as follows:

**INTRODUCTION**

1. This case arises under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended by the Superfund Amendment and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*

2. The City is a local government that owns land within the City limits and provides

drinking water to over 100,000 people within and without the City limits.

3. The County is a local government that owns land within the City limits.

4. The drinking water system owned by the City, and land owned by Plaintiffs, were contaminated by the United States, the U.S. Department of Defense, and the National Guard Bureau (collectively, “Federal Defendants”) during maintenance operations at a former National Guard Armory (“Armory”) located near the northeast corner of East Hadley Avenue and North Solano Drive in Las Cruces, New Mexico.

5. The City’s drinking water system and Plaintiffs’ land were also contaminated by dry cleaning operations operating at, among others, the following addresses in Las Cruces, New Mexico: 250 W. Las Cruces, Ave.; 705 N. Main St., 500 N. Main St.; 525 N. Church St.; 120 W. Picacho Ave.; and 113-135 W. Griggs Ave. (collectively, “Dry Cleaners”).

6. The Federal Defendants and the named current and former owners and operators of the Dry Cleaners (collectively, “Defendants”) released substances that are hazardous to human health and the environment into the soil and groundwater in Las Cruces. They own, owned, operate, and/or operated facilities at which these releases occurred. The release of these hazardous substances contributed to the plume of contaminated groundwater approximately 1.8 miles long and 0.5 mile wide that the United States Environmental Protection Agency (“EPA”) has designated a federal Superfund site: the Griggs & Walnut Ground Water Plume (“Site”).

7. The City and County own property that EPA alleges are sources of contamination at the Site. EPA has named Federal Defendants and Plaintiffs as parties responsible for cleanup costs at the Site.

8. Plaintiffs have spent millions of dollars on investigation and remediation of the

Site, including but not limited to investigation of the nature and extent of contamination, and installation of a water treatment system and associated infrastructure. Plaintiffs continue to incur additional costs of operating and maintaining this system, and meeting additional EPA demands.

9. Upon information and belief, Defendants have spent nothing on investigation or remediation of the Site, notwithstanding, in the case of the Federal Defendants, demands by EPA that they do so.

10. Plaintiffs seek a declaration of responsibility and payment from Defendants for past, present, and future response costs incurred in response to Defendants' release of hazardous substances at and to the Site.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over the subject matter of this case pursuant to CERCLA, 42 U.S.C. § 9613(b).

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 2201 and 1331 because this action arises under the laws of the United States.

13. The United States has waived its immunity from cost recovery suits under CERCLA, 42 U.S.C. § 9620(a)(1).

14. Under 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), the District of New Mexico is the proper venue for this action. The causes of action alleged in this Complaint involve real property located within this judicial district; namely, real property located in and around the City of Las Cruces, Doña Ana County, State of New Mexico.

### **PARTIES**

15. The City was at all times relevant herein, and still is, an incorporated municipality

existing under the laws of the State of New Mexico. The City owns property, including the former Armory, located within or near the Site. It also owns and operates a water utility that supplies drinking water to over 100,000 people.

16. The County was at all times relevant herein, and still is, a county existing under the laws of the State of New Mexico. The County owns property located within or near the Site that is currently used by its Fleet Management Department.

17. Defendant United States of America (“United States”) was at all times relevant, and still is, the federal government, duly organized and empowered to form federal agencies including the United States Department of Defense (“DOD”) and National Guard Bureau (“NGB”). The United States is responsible under the United States Constitution for the actions of such agencies.

18. Defendant DOD was at all relevant times, and still is, an agency of the United States, and responsible for the NGB as a joint activity.

19. Defendant NGB is an agency of the United States federal government organized as a joint activity of DOD, and was at all times relevant, duly organized and empowered to conduct operations at the Armory. The New Mexico National Guard owned, operated, or otherwise exercised control over the Armory from approximately 1947 through 1990. The New Mexico National Guard’s interests are represented by NGB. As such, this Complaint refers to all activities conducted by the New Mexico National Guard as though they were conducted by NGB.

20. Defendant The Lofts at Alameda, LLC (“The Lofts”) is a New Mexico limited liability company organized under the laws of the State of New Mexico, with its principal place of business at 141 Roadrunner Parkway, Suite 141, Las Cruces, New Mexico 88011.

21. Defendant American Linen Supply of New Mexico, Inc. (“American Linen”) is a corporation organized under the laws of the State of New Mexico, with its principal place of business at 550 N. Church St., Las Cruces, New Mexico, 88001.

22. Defendant Chisholm’s-Village Plaza, LLC. (“Chisholm’s Village”) is a limited liability company organized under the laws of the State of New Mexico, with its current mailing address 606 West Amador Ave., Las Cruces, New Mexico 88005.

23. Defendant Rawson Leasing Limited Liability Co. (“Rawson Leasing”) is a limited liability company organized under the laws of the State of New Mexico, with its current mailing address at 1103 N. Solano Dr., Las Cruces, NM 88001.

24. Defendants Jose and Yvonne Coronado (collectively, “Coronado”), husband and wife, are natural persons whose principal place of residence is in Las Cruces, New Mexico, with a last known address of 3863 Stoney Brook Circle, Las Cruces, NM 88005.

25. Defendants Does 1-5 are the former owners and/or operators, as defined by 42 U.S.C. § 9601(20), of the dry cleaning facilities formerly located at 250 W. Las Cruces Ave.; 705 N. Main Street; 120 W. Picacho St.; and 113-135 W. Griggs Street in Las Cruces, New Mexico, as further described below.<sup>1</sup>

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<sup>1</sup> Research indicates that many of the former operators and former property owners during dry cleaning operations are deceased individuals and defunct corporations. Should discovery uncover additional individuals or viable business entities that owned and/or operated the dry cleaners and properties on which dry cleaning and PCE releases historically occurred, then Plaintiffs will seek to amend this Complaint to add the actual party names, per Fed. R. Civ. P. 15(a). The “Does” are therefore included at this point to apprise the Court and the parties of this potentiality, which requires discovery to resolve.

## **FACTUAL BACKGROUND**

### **Federal Defendants**

26. From 1941 to 1965, the City owned the Armory. Between 1948 and 1965, the New Mexico State Armory Board (“Armory Board”) leased the property from the City “for National Guard purposes.” On December 6, 1965, the Armory Board acquired title to the Armory. Between 1962 and 1987, the Armory was subject to a construction agreement with the NGB.

27. Until 1948, the Armory property was open scrubland. From 1948 through 1990, the property was developed by Defendants as a National Guard Armory. Operations at the Armory included maintaining and storing military vehicles, anti-aircraft artillery cannons, and anti-aircraft weapon systems known as M42 Dusters, as well as headquartering the 642<sup>nd</sup> Maintenance Company and the National Guard Annual Training Equipment Pool.

28. On November 21, 1990, the City reacquired the Armory property. It currently is used as the Las Cruces Regional Aquatic Center.

29. During NGB’s ownership and/or operation of the Armory, NGB personnel used solvents containing tetrachloroethylene (“PCE”), a volatile organic compound used as a solvent and degreaser. Military standards and specifications required the National Guard to use PCE solvent to clean equipment including engine components, small arms, and armament. Defendants complied with these standards and specifications and used solvents containing PCE to clean weaponry at the Armory.

30. Federal Defendants released PCE into the soil and groundwater on and through concrete pads and unpaved areas, ultimately creating a PCE-contaminated groundwater plume nearly two miles long.

Dry Cleaner Defendants

Subject to reasonable opportunity for further investigation and discovery, on information and belief:

31. Starting in approximately 1940, dry cleaning operators in business under various names, including Cothorn Cleaners and Eubanks Cleaners, owned and/or operated a dry cleaning operation at 250 W. Las Cruces Ave. in Las Cruces, New Mexico. During approximately 32 years of dry cleaning operations at this facility, hazardous substances, including PCE, were used and released to the soil and groundwater at and to the Site. The Lofts is the current owner of the property on which the dry cleaning operation was located.

32. Starting in approximately 1938, dry cleaning operators in business under various names, including Acme Cleaners, Acme Laundry-Cleaners, Las Cruces Laundry and Cleaners, American Linen and Uniform Supply, and American Linen Supply of New Mexico, Inc. (“American Linen”) owned and operated dry cleaning operations at 500 N. Main St.; and at 525 N. Church St. in Las Cruces, New Mexico. American Linen has owned and/or operated the facilities since 1955. During approximately 80 years of dry cleaning operations at these facilities, hazardous substances, including PCE, were used and released to the soil and groundwater at and to the Site.

33. Starting in approximately 1951, a dry cleaning operation under the name Model Cleaners and Laundry operated at 120 W. Picacho Ave. in Las Cruces, New Mexico. During

approximately 21 years of dry cleaning operations at this facility, hazardous substances, including PCE, were used and released to the soil and groundwater at and to the Site. Chisholm's Village is the current owner of this facility.

34. Starting in approximately 1939, a dry cleaning operation under the name Model Cleaners operated at 113-135 W. Griggs Street in Las Cruces, New Mexico. During approximately 20 years of dry cleaning operations at this facility, hazardous substances, including PCE, were used and released to the soil and groundwater. "Does 1-5" operated this facility and/or owned the property on which this facility was located when hazardous substances, including PCE, were used and released to the soil and groundwater at and to the Site. Coronado is the current owner of the property on which this facility was located.

35. Starting in approximately 1972, dry cleaning operations under various names, including Main Street USA Cleaners and Eubanks Cleaners, operated at 705 N. Main St. in Las Cruces, New Mexico. Rawson Leasing is the current owner of the property on which this facility was located. Carl B. Rawson (deceased), the organizer of Rawson Leasing, and/or Joan M. Lawson, the registered agent of Rawson Leasing, owned the property on which this facility was located from approximately 1971 until 1992. During approximately 20 years of dry cleaning operations at this facility, hazardous substances, including PCE, were used and released to the soil and groundwater at and to the Site.

#### PCE Contamination

36. PCE is a known carcinogen and listed as a CERCLA hazardous substance by EPA. The Maximum Contaminant Level ("MCL") for PCE in groundwater is 5 micrograms per



liter ( $\mu\text{g/L}$ ). The MCL for a hazardous substance is the limit above which EPA has determined that adverse effects to human health will be seen.

37. In 1993, the New Mexico Environment Department Drinking Water Bureau detected PCE in water samples collected from two Las Cruces municipal water supply wells. By 2001, four City wells were found to be contaminated by PCE at levels above the MCL.

38. In 2001, EPA added the Site to the National Priorities List under CERCLA. The Site consists of a 3.5 billion gallon plume of PCE-contaminated groundwater that spans 1.8 miles by 0.5 mile. This plume, as shown through individual well contamination, affects the public water supply for the City, which supplies drinking water to over 100,000 people.

39. In 2003, EPA conducted field investigations at the Site to identify specific areas where PCE was released into the environment. EPA concluded that PCE was released at the Armory “prior to the current development in the vicinity, and possibly as part of episodic releases of waste solvent during activities at the former armory property.” EPA based this conclusion “on [soil vapor] samples collected from sampling locations in the vicinity of . . . property . . . formerly occupied by . . . [the] Armory[,]” which detected PCE in soil vapor up to 10 micrograms per liter (“ $\mu\text{g/L}$ ”).

40. In 2007, EPA again identified the Armory as a PCE source area in the Site’s Record of Decision (“ROD”). In the ROD, EPA stated that “the historical operations at the former New Mexico Army National Guard facility...[are] land use activities...[that EPA] determined to be relevant to the Site and represent [a] source...of contamination in ground water.”

41. In 2011, EPA identified NGB as a potentially responsible party (“PRP”) under CERCLA in connection with its operations at the Armory and demanded payment of unreimbursed response costs.

42. In 2002, the U.S. Geological Survey (“USGS”) performed soil-gas surveys for EPA at eleven former and present dry cleaning properties, including Dry Cleaners, to determine if PCE vapor was present in the soil. USGS collected between one and three soil-gas samples at each dry cleaning site, for a total of 21 soil-gas samples. Plaintiffs received the USGS report of the USGS 2002 sampling from Counterclaimant EPA on June 18, 2018, after requesting same in discovery.

43. At the former dry cleaning facility located at 250 W. Las Cruces Ave., USGS detected PCE in soil vapor at 3.22 µg/L; 8.64 µg/L; and 32.46 µg/L.

44. At the dry cleaning facility located at 500 N. Main St. (which, on information and belief, also operated, at various times, at 525 N. Church Street), USGS detected PCE in soil vapor at 11.02 ug/L and 19.36 µg/L.

45. At the former dry cleaning facility located at 705 N. Main St., USGS detected PCE in soil vapor at 253.78 µg/L.

46. At the former dry cleaning facility located at 120 W. Picacho St., USGS detected PCE in soil vapor at 0.63 µg/L and 6.02 µg/L.

47. At the former dry cleaning facility located at 113-135 W. Griggs St., USGS detected PCE in soil vapor at 32.76 µg/L.

48. The PCE releases at the Dry Cleaners contributed to the contamination of the Site.

49. Defendants have not paid EPA's past costs or any other costs of investigation and remediation of the Site.

50. By contrast, Plaintiffs have undertaken significant investigative and remedial measures to treat the contamination of groundwater caused by Defendants. Plaintiffs have completed a remedial investigation and feasibility study ("RI/FS") and constructed, and continue to operate and maintain, the remedial action, which includes but is not limited to a water treatment plant that treated over 430 million gallons of groundwater between 2012 and 2016.

51. Defendants have not reimbursed the City or County for any of their response costs to date, nor have they offered or agreed to abate the contamination or pay for future response costs.

**CAUSE OF ACTION: COST RECOVERY UNDER CERCLA**

52. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 through 51 above, as though set forth in full.

53. CERCLA, 42 U.S.C. § 9607, provides a right of action for private parties (including municipal and county governments) to recover the costs of responding to the release, or threatened release, of hazardous substances into the environment from past and present owners and operators of contaminated facilities or from those who arranged for the disposal of hazardous substances.

54. Defendants, and each of them, are "persons" under 42 U.S.C. § 9601(21).

55. The Site, Armory, and Dry Cleaners are "facilities" under 42 U.S.C. § 9601(9).

56. The substances and wastes (including, but not limited to, PCE) released into the environment by Federal Defendants and at Dry Cleaners are "hazardous substances" under 42

U.S.C. § 9601(14), and were “released” within the meaning of 42 U.S.C. §§ 9601(22) and 9607(a).

57. Defendants, and each of them, are currently owners and/or operators under 42 U.S.C. § 9601(20), and/or were owners and/or operators when releases of hazardous substances, including PCE, occurred at the facilities within the meaning of 42 U.S.C. § 9607(a)(1) and -(2).

58. The Federal Defendants, by their own action, contract, agreement, or otherwise, also arranged for the disposal or treatment of hazardous substances, including PCE, at the facility within the meaning of 42 U.S.C. § 9607(a)(3).

59. Plaintiffs have incurred and will continue to incur “necessary costs of response” as a result of the releases or threatened releases of hazardous substances, including PCE, into the environment at, to, or from the Site, within the meaning of 42 U.S.C. §§ 9601(25) and 9607.

60. Plaintiffs’ costs include, among other things: RI/FS costs; remedial design costs; costs for construction, implementation, operation and maintenance of the remedial action; and additional expenses which will be detailed at trial.

61. Plaintiffs’ past and future response actions and the costs thereby incurred have been and will continue to be carried out consistently with the National Contingency Plan, as that term is defined in 42 U.S.C. § 9601(31).

62. Pursuant to 42 U.S.C. § 9607(a)(2)-(3), Federal Defendants are strictly, jointly, and severally liable to Plaintiffs for the costs Plaintiffs have incurred and will continue to incur in response to the release or threatened release of hazardous substances at the Site, plus interest thereon, at the maximum rate allowed by law, from the date Plaintiffs expended such funds.

63. Pursuant to 42 U.S.C. § 9607(a)(1) and/or -(2), The Lofts, American Linen,

Chisholm's Village, Rawson Leasing, Coronado, and Does 1-5 are strictly, jointly, and severally liable to Plaintiffs for the costs Plaintiffs have incurred and will continue to incur in response to the release or threatened release of hazardous substances at the Site, plus interest thereon, at the maximum rate allowed by law, from the date Plaintiffs expended such funds, apart from costs incurred as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation.

**CAUSE OF ACTION: CONTRIBUTION UNDER CERCLA**

64. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 through 63 above, as though set forth in full.

65. Pursuant to 42 U.S.C. § 9613(f)(1), The Lofts, American Linen, Chisholm's Village, Rawson Leasing, Coronado, and Does 1-5 are liable to Plaintiffs for costs Plaintiffs may incur as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation.

**CAUSE OF ACTION: DECLARATORY RELIEF**

66. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 through 65 above, as though set forth in full.

67. The Court has jurisdiction to award declaratory relief pursuant to CERCLA, 42 U.S.C. § 9613(g)(2) and the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

68. There has arisen and now exists an actual, present, and existing dispute between Plaintiffs and Defendants. The parties have genuine and opposing interests, which are direct and substantial, relating to Defendants' liability and responsibility for future response costs necessary to abate the release or threatened release of hazardous substances at or from the Site.

69. The possibility of Plaintiffs incurring future costs of response necessary to abate the release or threatened release of hazardous substances at the Site is not unlikely, remote, or speculative.

70. Plaintiffs are entitled to entry of a judgment declaring that Federal Defendants are strictly, jointly and severally liable under CERCLA for past and future costs necessary to respond to and abate the release or threatened release of hazardous substances at or from the Site. Such judgment shall be final, conclusive, and binding on any subsequent action or actions to recover further response costs or damages.

71. Plaintiffs are entitled to entry of a judgment declaring that The Lofts, American Linen, Rawson Leasing, Chisholm's Village, Coronado, and Does 1-5 are strictly, jointly and severally liable under CERCLA for past and future costs necessary to respond to and abate the release or threatened release of hazardous substances at or from the Site, apart from costs incurred as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation. Such judgment shall be final, conclusive, and binding on any subsequent action or actions to recover further response costs or damages.

72. Plaintiffs are entitled to entry of a judgment declaring that The Lofts, American Linen, Rawson Leasing, Chisholm's Village, Coronado, and Does 1-5 are liable under CERCLA for costs that Plaintiffs may incur as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation. Such judgment shall be final, conclusive, and binding on any subsequent action or actions to recover further response costs or damages.

73. Plaintiffs further request that this Court, after entering the declaratory judgment prayed for herein, retain jurisdiction over this action to grant Plaintiffs such further relief against

Defendants as is necessary and proper to effectuate the Court's declaration, including an award of costs and entry of an injunction to implement a judgment entered on Plaintiffs' claims under 28 U.S.C. § 2202.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment and relief against Defendants as follows:

1. An award of damages and costs to Plaintiffs, reflecting the costs that Plaintiffs have incurred and will continue to incur in response to the release or threatened release of hazardous substances at or near the facility, plus interest thereon, at the maximum rate allowed by law;
2. A declaration that Federal Defendants are strictly, jointly and severally liable for costs of response incurred by Plaintiffs to date, and for the costs of response to be incurred by Plaintiffs in the future;
3. A declaration that The Lofts, American Linen, Rawson Leasing, Chisholm's Village, Coronado, and Does 1-5 are strictly, jointly and severally liable for costs of response incurred by Plaintiffs to date, and for the costs of response to be incurred by Plaintiffs in the future, apart from costs incurred as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation;
4. A declaration that The Lofts, American Linen, Rawson Leasing, Chisholm's Village, Coronado, and Does 1-5 are liable for costs that Plaintiffs may incur as a result of the claims brought under 42 U.S.C. § 9606(a) and 42 U.S.C. § 9607(a) on behalf of EPA in this litigation.

5. Pre-judgment interest on all damages awarded at the maximum rate allowed by law;
6. Leave of Court to conform its pleadings to the proof shown at trial;
7. Such other and further relief, including additional injunctive and declaratory relief, as this Court may deem just and proper.

DATED: August 23, 2018.

MARTEN LAW PLLC

/s/ Jessica K. Ferrell

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Attorneys for City of Las Cruces and Doña Ana  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of August, 2018, I filed the foregoing using CM/ECF which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

|                  |                            |
|------------------|----------------------------|
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/s/ Jessica K. Ferrell  
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